

**STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL**

**Petition of BNE Energy Inc. for a
Declaratory Ruling for the Location,
Construction and Operation of a 4.8 MW
Wind Renewable Generating Project on
Winsted-Norfolk Road in Colebrook,
Connecticut (“Wind Colebrook North”)**

Petition No. 984

May 4, 2011

**PETITIONER’S OBJECTION TO FAIRWINDCT, INC.,
STELLA AND MICHAEL SOMERS AND SUSAN WAGNER’S
MOTION TO COMPEL PRODUCTION**

The petitioner, BNE Energy Inc. (“BNE”), submits this objection to FairwindCT, Inc., Stella and Michael Somers and Susan Wagner’s (the “Grouped Parties”) motion to compel production, or in the alternative, to strike, dated April 29, 2011. In their motion, the Grouped Parties seek to compel production of the Mechanical Loads Assessments (“MLAs”) performed by GE regarding the proposed project.

As already indicated by BNE in interrogatory responses, two MLAs were performed for the Colebrook North site. One MLA was conducted for the original layout as proposed in the petition (the “first MLA”). When BNE proposed to relocate turbine #1, a second MLA was performed (the “second MLA”).

The first MLA was filed under seal on March 24, 2011 and the second was filed on April 25, 2011. BNE learned on Thursday, April 28, 2011 that the copies of the MLAs that BNE had filed with the Council had been misplaced at the Council offices, in no doubt due to the voluminous filings received by that office in the last few weeks. BNE has no knowledge of when the copy was misplaced or for how long it was unavailable. As indicated by counsel for the petitioner during the hearing on April 28, 2011, BNE forwarded additional copies of the MLAs to the Council’s offices under seal and those are available for

review by all parties and intervenors who have executed the required non-disclosure agreement.

The Grouped Parties reference interrogatory responses by BNE that indicate that both MLAs were to be filed under seal pursuant to protective order in this proceeding. In fact, prior to April 25, 2011, BNE had never represented that the second MLA would be filed with the Council, because the second MLA had never been requested by any party or intervenor to this proceeding. Fairwind requested a copy of the second MLA in its third set of interrogatories, and on April 25, 2011, BNE responded and indicated that the second MLA “is also being filed separately and under seal pursuant to the protective order in place in this petition.” *See* response to Q3. Accordingly, on April 25, 2011, BNE filed the second MLA with the Council. Both MLAs are available for review by all parties and intervenors at the Council’s office pursuant to the procedures for confidential and protected information established in this proceeding. There is simply no prejudice.

The Grouped Parties seek the draconian remedy of striking any and all testimony regarding the results of the MLAs from the record. The MLAs are reliable analyses performed by an independent company, GE Energy, which is not a party to this proceeding. The MLAs provide information that is both relevant and valuable to the Council in its decision-making process, and testimony concerning the MLAs should not be stricken from the record just because one copy happened to be misplaced at the singular hour the Grouped Parties chose to visit the Council offices.

WHEREFORE, BNE objects to the Grouped Parties' motion to compel production, and in the alternative to strike, as the requested documents have already been produced and therefore there is no need to strike relevant testimony from the record.

Respectfully Submitted,

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Certification

This is to certify that a copy of the foregoing has been mailed this date to all parties and intervenors of record.

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